

<b>STATE OF NORTH CAROLINA</b>  <b>Office of Information Technology Services</b>	<b>REQUEST FOR PROPOSAL NO. 41-LW1794</b>
	Bids will be publicly opened: February 13, 2015
	Contract Type: Agency Specific
<b>Refer <u>ALL</u> Inquiries to:</b> Linda Waterman Telephone No. 919-754-6614	Date Issued: December 2, 2014 Commodity Number: 962-58 Commodity: Professional Services in preparation of RFP, evaluation & management of process
E-Mail: <a href="mailto:linda.waterman@nc.gov">linda.waterman@nc.gov</a>	Using Agency Name: NC 911 Board
<b>(See page 2 for delivery instructions)</b>	Agency Requisition No. RQ18250335

**OFFER AND ACCEPTANCE:** This solicitation advertises the State's needs for the services and/or goods described herein. The State seeks proposals comprising competitive bids offering to sell the services and/or goods described in this solicitation. All proposals and responses received shall be treated as offers to contract. The State's acceptance of any proposal must be demonstrated by execution of the acceptance found below, and any subsequent Request for Best and Final Offer, if issued. Acceptance shall create a contract having an order of precedence among terms as follows: Special terms and conditions specific to this Request for Proposal (RFP), Specifications of the solicitation documents, except as amended, the North Carolina Information Technology Procurement Office General Terms and Conditions for Goods and Related Services, Best and Final Offers (BAFO), if any and the awarded Vendor's proposal.

**EXECUTION:** In compliance with this RFP, and subject to all the conditions herein, the undersigned offers and agrees to furnish any or all services or goods upon which prices are bid, at the price(s) offered herein, within the time specified herein. By executing this bid, I certify that this bid is submitted competitively and without collusion.

**Failure to execute/sign bid prior to submittal shall render bid invalid. Late bids are not acceptable.**

BIDDER:		
STREET ADDRESS:	P.O. BOX:	ZIP:
CITY & STATE & ZIP:	TELEPHONE NUMBER:	TOLL FREE TEL. NO
PRINT NAME & TITLE OF PERSON SIGNING:		FAX NUMBER:
AUTHORIZED SIGNATURE:	DATE:	E-MAIL:

**ACCEPTANCE OF BID:** If any or all parts of this bid are accepted, an authorized representative of Office of Information Technology Services (OITS) shall affix their signature hereto and this document and the provisions of the special terms and conditions specific to this Request for Proposal, the specifications, and the State's General Terms and Conditions shall then constitute the written agreement between the parties. A copy of this acceptance will be forwarded to the successful Vendor(s).

**FOR OITS USE ONLY**

Offer accepted and contract awarded this \_\_\_\_ day of \_\_\_\_\_, 2015, as indicated on attached certification,  
by \_\_\_\_\_ (Authorized representative of OITS).

**DELIVERY INSTRUCTIONS:** Vendor must deliver one (1) **signed original** and one (1) **copy** of the Proposal to Issuing Agency in a sealed package with Company Name and RFP Number clearly marked on the front. **Vendor must return all the pages of this solicitation in their response.** Vendor must also submit one (1) signed, executed electronic copy of its proposal on USB Flash Drive or read-only CD/DVD(s). The files

should not be password-protected and must be text searchable (e.g. PDF or other) and capable of being copied to other media.

Address envelope and insert bid number as shown below. Please note that the US Postal Service does not deliver any mail (US Postal Express, Certified, Priority, Overnight, etc.) on a set delivery schedule to this Office. **It is the responsibility of the Vendor to have the bid in this Office by the specified time and date of opening.**

<b>DELIVER TO:</b>
BID NUMBER: 41-LW1794 Office of Information Technology Services Attn: Linda Waterman 3900 Wake Forest Road Raleigh, NC 27609

Sealed bids, subject to the conditions made a part hereof, will be received at 3900 Wake Forest Road, Raleigh, NC until 2:00pm Eastern Standard Time on the day of opening and then opened, for furnishing and delivering the commodity as described herein. Proposals for this RFP must be submitted in a sealed package with the Execution of Proposal signed and dated by an official authorized to bind the Vendor's firm. Failure to return a signed execution of proposal shall result in disqualification. All proposals must comply with Section VI, Proposal Content and Organization.

Proposals will not be accepted by electronic means. This RFP is available electronically at <https://www.ips.state.nc.us/ips/>. All inquiries regarding the RFP requirements are to be addressed to the contact person listed on Page One.

**DIGITAL IMAGING:** The State will digitize the Vendor's response if not received electronically, and any awarded contract together with associated contract documents. This electronic copy shall be a preservation record, and serve as the official record of this solicitation with the same force and effect as the original written documents comprising such record. Any printout or other output readable by sight shown to reflect such record accurately is an "original."

Written questions concerning this RFP will be received until January 9, 2015 at 2:00 pm Eastern Standard Time. They must be sent via e-mail to: [linda.waterman@nc.gov](mailto:linda.waterman@nc.gov). Please insert "Questions 41-LW1794" as the subject for the email. The questions are to be submitted in the following format:

Citation	Vendor Question	The State's Response
Bid Section, Page Number		

The State will prepare responses to all written questions submitted, and post an addendum to the Interactive Purchasing System (IPS) <https://www.ips.state.nc.us/ips/>. Oral answers are not binding on the State.

Vendor contact regarding this RFP with anyone other than Linda Waterman may be grounds for rejection of said Vendor's offer.

**Addendum to RFP:** If a pre-bid conference is held or written questions are received prior to the submission date, an addendum comprising questions submitted and responses to such questions, or any additional terms deemed necessary by the State will be posted to the Interactive Purchasing System (IPS), <https://www.ips.state.nc.us/ips/>, and shall become an Addendum to this RFP. Vendors' questions posed orally at any pre-bid conference must be reduced to writing by the Vendor and provided to the Purchasing Officer as directed by said Officer.

Critical updated information may be included in these Addenda. It is important that all Vendors bidding on this proposal periodically check the State website for any and all Addenda that may be issued prior to the bid opening date.

**Basis for Rejection.** Pursuant to 9 NCAC 06B.0401, the State reserves the right to reject any and all offers, in whole or in part; by deeming the offer unsatisfactory as to quality or quantity, delivery, price or service offered; non-compliance with the requirements or intent of this solicitation; lack of competitiveness; error(s) in specifications or indications that revision would be advantageous to the State; cancellation or other changes in the intended project, or other determination that the proposed requirement is no longer needed; limitation or lack of available funds; circumstances that prevent determination of the best offer; or any other determination that rejection would be in the best interest of the State.

**NOTICE TO VENDORS:** The State objects to and will not be required to evaluate or consider any additional terms and conditions submitted with a Bidder's response. This applies to any language appearing in or attached to the document as part of the Bidder's response. By execution and delivery of this Invitation for Bids and response(s), the Bidder agrees that any additional terms and conditions, whether submitted purposely or inadvertently, shall have no force or effect unless such are specifically accepted by the State.

**LATE PROPOSALS:** Regardless of cause, late proposals will not be accepted and will automatically be disqualified from further consideration. It shall be the Vendor's sole risk to ensure delivery at the designated office by the designated time. Late proposals will not be opened and may be returned to the Vendor at the expense of the Vendor or destroyed if requested.

**VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM:** Vendor Link NC allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System at the following web site: <https://www.ips.state.nc.us/ips>

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## **I. Section I. Introduction**

The North Carolina 911 Board issued a Request for Information (the "RFI") to gather information and statements of interest relating to design, development and implementation of a communications network throughout North Carolina. This was described as an Emergency Services Internet Protocol (IP) network (ESInet). In addition the RFI gathered information and statements of interest relating to systems having Next Generation 911 functionality that would use the ESInet to provide these services to Public Safety Answering Points (PSAPs). Responses were received from: AT&T, Cassidian Communications, an Airbus Defense & Space Holding, Inc. Company, CenturyLink, Emergency Call Works, Inc., General Dynamics Information Technology, GeoComm, Inc., INdigital telecom, Intrado, Inc., MCNC, Modular Communications Systems, Inc. (ModuCom), Private Digital Network Services, Synergym Technologies, Inc., and Time Warner Cable. Having received and reviewed the responses, the 911 Board wishes to contract for technical services to prepare one or more Requests for Proposals (RFP), assist the Board in reviewing and evaluating proposals received, and similar work. RFI responses comprise much confidential information and will only be available to the awarded Vendor under this RFP. A copy of the RFI will be provided to Vendors upon request or may be made available electronically through the Board's website: <https://www.nc911.nc.gov/>.

The North Carolina 911 Board plans to issue one or more RFPs to create a statewide ESInet and implement Next Generation 911 system (NG911) which would use the statewide ESInet to deliver Next Generation 911 functional capabilities to all PSAPs. These Next Generation 911 functional capabilities comprise GIS operation supporting call routing, Hosted Call Processing, a Network Operations Center (NOC) and Help Desk, CAD interoperability for all PSAPs, and radio interoperability for all PSAPs. The 911 Board recognizes a likely interplay between its efforts and federal FirstNet development; however the planned RFPs are not intended to replace or supplant the State's FirstNet effort. The NG911 system functions are to be open standards based and consistent with the National Emergency Number Association's (NENA) i3 next generation standards, requirements, and best practices.

The 911 Board's succinct purpose statement for the NG911 RFPs is: to seek a solution that will meet current 911 needs, provide an ESInet IP backbone for NG911 applications, increase PSAP interoperability, and allow for an error free transition from the current e-911 environment to a Next Generation 911 environment for all primary PSAPs; presently there are 123 primary PSAPs. Secondary PSAPs, backup PSAPs and facilities which may be integrated such as PSAPs located on military bases or University campuses may be considered during development of the new NG911 RFP.

Bidders must demonstrate experience in designing and implementing IP networks (ESInets), technical expertise in the areas of GIS, hosted systems, NOC and Help Desk support of operations, CAD interoperability, and radio interoperability. The North Carolina 911 Board seeks a client advocate to provide independent expertise and advice throughout this phase of a critical project.

Bidders must be independent of all equipment, network, hardware, and software providers. The selected Bidder must recuse themselves from directly or indirectly providing the state's PSAPs with equipment, network, hardware or software for three (3) years following contract execution and must recuse themselves from bidding on the RFP(s) they assist in creating. 911 product vendors, value-added resellers (VARs), local exchange carriers (LECs), and 911 service providers, including subsidiaries and partners of the aforementioned business categories are excluded from responding to this RFP in the interest of maintaining a high level of impartiality and the integrity of the project.

Indefinite Quantity Contract. This solicitation will establish a Term Contract pursuant to 9 NCAC 06B.0701 for an indefinite quantity contract. Services under the anticipated contract will commence after the award and immediately upon execution of a contract with the selected consulting firm.

The State reserves the right to make partial, progressive or multiple awards: where it is advantageous to award separately by services or needs as presented herein; or where more than one supplier is needed to provide the

contemplated requirements as to quantity, quality, delivery, service, geographical areas; and where other factors are deemed to be necessary or proper to the purchase in question.

## II. **Section II. Bidding Information**

### A. **Instructions to Vendors**

Additional acronyms, definitions and abbreviations may be included in the text of the RFP.

- 1) Proposals submitted only electronically, or via facsimile (FAX) machine will not be accepted.
- 2) **EXECUTION**: Failure to sign under EXECUTION section will render proposal invalid.
- 3) **TIME FOR CONSIDERATION**: Unless otherwise indicated on the first page of this document, Vendor's offer must be valid for one hundred and eighty (180) days from the date of proposal opening
- 4) **FAILURE TO MEET PROPOSAL REQUIREMENTS**: While it is not anticipated that the awarded Vendor will fail to meet the proposal requirements, if such should occur, the right is reserved to further evaluate the responses to this RFP and then to recommend an award to the next Vendor response that represents the best interest of the State.
- 5) **PROMPT PAYMENT DISCOUNTS**: Vendors are urged to compute all discounts into the price offered. If a prompt payment discount is offered, it will not be considered in the award of the contract except as a factor to aid in resolving cases of identical prices.
- 6) **MISCELLANEOUS**: Masculine pronouns shall be read to include feminine pronouns and the singular of any word or phrase shall be read to include the plural and vice versa.
- 7) **VENDOR REGISTRATION AND SOLICITATION NOTIFICATION SYSTEM**: Vendor Link NC allows Vendors to electronically register with the State to receive electronic notification of current procurement opportunities for goods and services available on the Interactive Purchasing System at the following web site: <https://www.ips.state.nc.us/IPS/Vendor/Vndrmess.asp>
- 8) **ORGANIZATION**: Vendors are directed to carefully review Section VI herein and fully comply with the content and organizational requirements therein.
- 9) **E-PROCUREMENT**: **This is NOT an e-procurement solicitation.** See paragraphs #47 and 48 of the attached Information Technology Terms and Conditions for Goods and Related Services. The Terms and Conditions made part of this solicitation contain language necessary for the implementation of North Carolina's statewide e-procurement initiative. It is the Vendor's responsibility to read these terms and conditions carefully and to consider them in preparing the offer. By signature, the Vendor acknowledges acceptance of all terms and conditions including those related to e-procurement.
  - a. General information on the e-procurement service can be found at <http://eprocurement.nc.gov/>
  - b. Within two days after notification of award of a contract, vendor must register in NC E-Procurement @ Your Service at the following web site: <http://eprocurement.nc.gov/Vendor.html>
  - c. As of the RFP submittal date, the Vendor must be current on all e-Procurement fees. If the Vendor is not current on all e-Procurement fees, the State may disqualify the Vendor from participation in this RFP.
  - d. If the awarded Vendor does not stay current on all e-Procurement fees, the State may remove the Vendor from the contract for a thirty (30) day period or until resolution, whichever is shorter. If the Vendor is making a reasonable effort to resolve any past due fees, no penalty will be imposed. The determination of the reasonable effort criteria will be at the discretion of the Statewide IT Procurement Office.
- 10) **E-VERIFY**: Pursuant to N.C.G.S. 147-33.95(g), the State shall not enter into a contract unless the awarded Vendor and each of its subcontractors comply with the E-Verify requirements of N.C.G.S. Chapter 64, Article 2. Vendors are directed to review the foregoing laws. Any awarded Vendor must

submit a certification of compliance with E-Verify to the awarding agency, and on a periodic basis thereafter as may be required by the State.

## B. General Conditions for Proposals

Definitions, Acronyms and Abbreviations. Generally, see 9 NCAC 06A.0102 for definitions. The following are additional defined terms:

- a. **The State:** Is the State of North Carolina, and its Agencies.
- b. **ITS:** Office of Information Technology Services.
- c. **Goods:** Includes intangibles such as computer software; provided, however that this definition does not modify the definition of "goods" in the context of N.C.G.S. §25-2-105 (UCC definition of goods).
- d. **Vendor:** Company, firm, corporation, partnership, individual, etc., submitting a response to a solicitation.
- e. **Open Market Contract:** A contract for the purchase of goods or services not covered by a term, technical, or convenience contract.
- f. **24x7:** A statement of availability of systems, communications, and/or supporting resources every hour (24) of each day (7 days weekly) throughout every year for periods specified herein. Where reasonable downtime is accepted, it will be stated herein. Otherwise, 24x7 implies NO loss of availability of systems, communications, and/or supporting resources.
- g. **Reasonable, Necessary or Proper:** as used herein shall be interpreted solely by the State of North Carolina.
- h. **RFP:** Request for Proposal
- i. **ESInet:** Emergency Services IP Network
- j. **NENA i3:** National Emergency Number Association i3 technical requirements document.
- k. **GIS Routing:** Geographic Information System integrates hardware, software and data for capturing, managing, analyzing, and displaying all forms of geographically referenced information or location information for the purposes of call routing and caller location identification in a Next Generation technical environment.

- 1) Read and Review. It shall be the Vendor's responsibility to read this entire document, review all enclosures and attachments, and comply with all requirements and the State's intent as specified herein. If a Vendor discovers an inconsistency, error or omission in this solicitation, the Vendor should request a clarification from the State's contact person listed on the front page of the solicitation. Questions and clarifications must be submitted in writing and may be submitted by personal delivery, letter, fax or e-mail within the time period identified hereinabove.
- 2) Vendor Responsibility. The Vendor(s) will be responsible for investigating and recommending the most effective and efficient technical configuration. Consideration shall be given to the stability of the proposed configuration and the future direction of technology, confirming to the best of their ability that the recommended approach is not short lived. Several approaches may exist for hardware configurations, other products and any software. The Vendor(s) must provide a justification for their proposed hardware, product and software solution(s) along with costs thereof. Vendors are encouraged to present explanations of benefits and merits of their proposed solutions together with any accompanying services, maintenance, warranties, value added services or other criteria identified herein.
- 3) Oral Explanations. The State will not be bound by oral explanations or instructions given at any time during the bidding process or after award. Vendor contact regarding this RFP with anyone other than the Agency contact or procurement officer named on Page 2 above may be grounds for rejection of said Vendor's offer. Agency contact regarding this RFP with any Vendor may be grounds for cancellation of this RFP.
- 4) Insufficiency of References to Other Data. **Only information that is received in response to this RFP will be evaluated.** Reference to information previously submitted or Internet Website Addresses (URLs) will not suffice as a response to this solicitation.



- 5) Conflict of Interest. Applicable standards may include: N.C.G.S. §§ 147-33.100, 14-234, 133-32. The Vendor shall not knowingly employ, during the period of this contract, nor in the preparation of any response to this solicitation, any personnel who are, or have been, employed by a Vendor also in the employ of the State and who are providing services involving, or similar to, the scope and nature of this solicitation or the resulting contract.
- 6) Contract Term. A contract awarded pursuant to this RFP shall have an effective date as provided in the Notice of Award. The term shall be **one** (1) year, and will expire upon the anniversary date of the effective date unless otherwise stated in the Notice of Award, or unless terminated earlier. The State retains the option to extend this contract for **two** (2) additional **one** (1) year periods at its sole discretion.
- 7) Effective Date. This solicitation, including any Exhibits, or any resulting contract or amendment shall not become effective nor bind the State until the appropriate State purchasing authority/official or Agency official has signed the document(s), contract or amendment; the effective award date has been completed on the document(s), by the State purchasing official, and that date has arrived or passed. The State shall not be responsible for reimbursing Vendor for goods provided nor services rendered prior to the appropriate signatures and the arrival of the effective date of the Contract. No contract shall be binding on the State until an encumbrance of funds has been made for payment of the sums due under the contract.
- 8) Recycling and Source Reduction. It is the policy of this State to encourage and promote the purchase of products with recycled content to the extent economically practicable, and to purchase items which are reusable, refillable, repairable, more durable, and less toxic to the extent that the purchase or use is practicable and cost-effective. We also encourage and promote using minimal packaging and the use of recycled/recyclable products in the packaging of goods purchased. However, no sacrifice in quality of packaging will be acceptable. The Vendor remains responsible for providing packaging that will protect the commodity and contain it for its intended use. Vendors are strongly urged to bring to the attention of the purchasers at the Statewide IT Procurement Office those products or packaging they offer which have recycled content and that are recyclable.
- 9) Historically Underutilized Businesses. Pursuant to General Statute 143-48, 143-128.4 and Executive Order #13, the State invites and encourages participation in this procurement process by businesses owned by minorities, women, disabled, disabled business enterprises and non-profit work centers for the blind and severely disabled. Additional information may be found at: <http://www.doa.nc.gov/hub/>
- 10) Clarifications/Interpretations. Any and all amendments or revisions to this document shall be made by written addendum from the IT Procurement Office. Vendors may call the purchasing agent listed on the first page of this document to obtain a verbal status of contract award. If either a unit price or extended price is obviously in error and the other is obviously correct, the incorrect price will be disregarded.
- 11) Rights Reserved. While the State has every intention to award a contract as a result of this RFP, issuance of the RFP in no way constitutes a commitment by the State of North Carolina, or the procuring Agency, to award a contract. Upon determining that any of the following would be in its best interests, the State may:
- a) waive any formality;
  - b) amend the solicitation;
  - c) cancel or terminate this RFP;
  - d) reject any or all proposals received in response to this document;
  - e) waive any undesirable, inconsequential, or inconsistent provisions of this document, which would not have significant impact on any proposal;
  - f) if the response to this solicitation demonstrate a lack of competition, negotiate directly with one or more Vendors;
  - g) not award, or if awarded, terminate any contract if the State determines adequate State funds are not available; or
  - h) if all responses are deficient, determine whether Wavier of Competition criteria may be satisfied, and if so, negotiate with one or more Vendors.



- 12) Alternate Bids. Vendor may submit alternate bids for various levels of service(s) or products meeting specifications. Alternate bids must specifically identify the RFP requirements and advantage(s) addressed by the alternate bid. Any alternate proposals must be clearly marked with the legend as shown herein. Each proposal must be for a specific set of services or products and bid at specific pricing. If a Vendor chooses to respond with various service or product offerings, each must be bid with a different price and a separate proposal response. Vendors may also provide multiple proposals for software or systems coupled with support and maintenance options, provided, however, all proposals must satisfy the specifications.

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Alternate bids must be clearly marked

**“Alternate Bid for ‘name of Vendor’”**

and numbered sequentially with the first bid if separate proposals are submitted.

This legend must be in bold type of not less than 14-point type on the face of the bid, and on the text of the alternative proposal.

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- 13) Co-Vendors. Vendors may submit offers as partnerships or other business entities. Such partners or other “co-Vendors”, if any, shall disclose their relationship fully to the State. The State shall not be obligated to contract with more than one Vendor. Any requirements for references, financial statements or similar reference materials shall mean **all** such partners or co-Vendors.
- 14) Submitting a Proposal. Each Vendor submitting a proposal warrants and represents that:
- The proposal is based upon an understanding of the specifications and requirements described in this RFP.
  - Costs for developing and delivering responses to this RFP and any subsequent presentations of the proposal as requested by the State are entirely the responsibility of the Vendor. The State is not liable for any expense incurred by the Vendors in the preparation and presentation of their proposals.
- 15) All materials submitted in response to this RFP become the property of the State and are to be appended to any formal documentation, which would further define or expand any contractual relationship between the State and Vendor resulting from this RFP process.
- 16) Non-Responsive Bids: Vendor bid responses will be deemed non-responsive by the State and will be rejected without further consideration or evaluation if statements such as the following are included:
- “This bid does not constitute a binding offer”,
  - “This bid will be valid only if this offer is selected as a finalist or in the competitive range”,
  - “The vendor does not commit or bind itself to any terms and conditions by this submission”,
  - “This document and all associated documents are non-binding and shall be used for discussion purposes only”,
  - “This bid will not be binding on either party until incorporated in a definitive agreement signed by authorized representatives of both parties”, or
  - A statement of similar intent.

## C. Evaluation Process

- 1) "Best Value" procurement methods are authorized by N.C.G.S. §143-135.9. The award decision is made based on multiple factors, including: total cost of ownership, meaning the cost of acquiring, operating, maintaining, and supporting a product or service over its projected lifetime; the evaluated technical merit of the Vendor's proposal; the Vendor's past performance; and the evaluated probability of performing the requirements stated in the solicitation on time, with high quality, and in a manner that accomplishes the stated business objectives and maintains industry standards compliance.

- 2) Source selection. A trade-off/ranking method of source selection will be utilized in this procurement to allow the State to award the contract to the Vendor providing the Best Value, and recognizing that Best Value may result in award other than the lowest price or highest technically qualified offer. By using this method, the overall ranking may be adjusted up or down when considered with, or traded-off against other non-price factors.
- i. The evaluation committee may request clarifications, an interview with or presentation from any or all Vendors as allowed by 9 NCAC 06B.0307. However, the State may refuse to accept, in full or partially, the response to a clarification request given by any Vendor. Vendors are cautioned that the evaluators are not required to request clarifications; therefore, all offers should be complete and reflect the most favorable terms. Vendors should be prepared to send qualified personnel to Raleigh North Carolina, to discuss technical and contractual aspects of the proposal.
  - ii. Evaluation Process Explanation. State Agency employees will review all proposals. All proposals will be initially classified as being responsive or non-responsive. If a proposal is found non-responsive, it will not be considered further. All responsive proposals will be evaluated based on stated evaluation criteria. Any references in an answer to another location in the RFP materials or Proposal shall have specific page numbers and sections stated in the reference.
  - iii. To be eligible for consideration, a Vendor must meet the intent of all requirements. Compliance with the intent of all requirements will be determined by the State. Responses that do not meet the full intent of all requirements listed in this RFP may be deemed deficient. Further, a serious deficiency in the response to any one factor may be grounds for rejection regardless of overall score.
  - iv. The State may establish a competitive range during initial review and evaluation of RFP responses. If a competitive range is established, the State may then give notice to Vendors excluded from such range pursuant to OITS procurement rules: 9 NCAC 06B.0404. Exclusion shall be given by written notice and such notice shall include further notice of whether debriefings will be available, and the time for debriefings.
  - v. Vendors are advised that the State is not obligated to ask for, or accept after the closing date for receipt of proposal, data that is essential for a complete and thorough evaluation of the proposal.
- 3) Best and Final Offers (BAFO). If negotiations or subsequent offers are solicited, the Vendors shall provide BAFOs in response. Failure to deliver a BAFO when requested shall disqualify the non-responsive Vendor from further consideration. The State may establish a competitive range based upon evaluations of proposals, and request BAFOs from the Vendors within this range; e.g. "Finalist Vendors". The State will evaluate BAFOs and add any additional weight to the Vendors' respective proposal. Additional weight awarded from oral presentations and product demonstrations during negotiations, if any, will be added to the previously assigned weights to attain their final ranking.
- 4) Each of the criteria below shall be evaluated:
- a) Demonstration of compliance with the Mandatory Proposal Specifications.
  - b) Evaluation Criteria. Vendor qualifications substantially impact the evaluation process, and will be evaluated for the following,
    - i. Bidder qualifications.....20%
    - ii. Technical experience of key personnel.....20%
    - iii. References.....10%
    - iv. Response to Statement of Work (RFP Section III, 6).....30%

- v. Lessons learned.....10%
  - vi. Cost.....10%
- 5) Vendor may be disqualified from any evaluation or award if Vendor or any key personnel proposed has previously failed to perform satisfactorily during the performance of any contract with the State, or violated rules or statutes applicable to public bidding in the State.
- 6) The Procurement Manager will make every effort to adhere to the following schedule:

Action	Responsibility	Date
Issue of RFP	State	12/2/2014
Receive questions from Vendors begin	State	12/10/2014
Deadline To Submit Additional Questions	Potential Vendors	1/9/2015
Response to Written Questions/RFP Amendments	State	1/14/2015
Submission of Proposal	Vendor(s)	2/13/2015
Proposal Evaluation	Evaluation Committee	2/20/2015
Selection of Finalists	Evaluation Committee	2/23/2015
Negotiations may be conducted at the State's option, but such are not anticipated.	Evaluation Committee designees and selected Vendor(s)	2/25/2015
Best and Final Offers from Finalists	Vendors	3/4/2015
Oral Presentation and/or Product Demonstrations by Finalists if requested by the State	Vendors	3/11/2015
Contract Award	Statewide IT Procurement Office	3/30/2015
Protest Deadline	Vendors	15 days after award

- 7) Award of Contract. Qualified proposals will be evaluated and acceptance may be made in accordance with Best Value procurement practices as defined by GS §143-135.9 and applicable administrative rules. The responsible Vendor whose proposal is most advantageous to the State, taking into consideration the evaluation factors herein, will be recommended for contract award. Unless otherwise

specified by the State or the Vendor, the State reserves the right to accept any item or group of items on a multi-item proposal.

- 8) The State has implemented links to the Interactive Purchasing System (IPS) that allow the public to retrieve proposal award information electronically from our Internet web site: <https://www.ips.state.nc.us/ips/>. Click on the IPS BIDS icon, click on Search for BID, enter the Agency prefix-proposal number (41-LW1794), and then search. This information may not be available for several weeks depending upon the complexity of the acquisition and the length of time to complete the evaluation process.
- 9) Protest Procedures: Protests of awards exceeding \$25,000 in value must be submitted to the issuing Agency at the address given on the first page of this document. Protests must be received in this office within fifteen (15) calendar days from the date of the contract award and provide specific reasons and any supporting documentation for the protest. **All protests will be governed by Title 9, Office of Information Technology Services, Subchapter 06B Sections .1101 - .1121.**

### III. Section III. Technical Specifications

- 1) Enterprise Architecture Standards: The North Carolina Statewide Technical Architecture is located at the following website: (<http://www.ncsta.gov> ). This provides a series of domain documents describing objectives, principles and best practices for the development, implementation, and integration of business systems. Agencies and Vendors should refer to these Architecture documents when implementing enterprise applications and/or infrastructure.
- 2) All bids shall include specifications and technical literature sufficient to allow the State to determine that the equipment meets all requirements. This technical literature will be the primary source for bid evaluation. If a requirement is not addressed in the technical literature it must be supported by additional documentation and included with the bid. Bid responses without sufficient technical documentation may be rejected.
- 3) The State may, in its sole discretion, investigate any substitute or equivalent goods irrespective of any representation made by a Vendor or manufacturer.
- 4) Specifications: Any deviation from specifications indicated herein must be clearly identified as an exception and listed on a separate page labeled "Exceptions to Specification"; otherwise, it will be considered that items offered are in strict compliance with these specifications, and Vendor will be held responsible. Any deviations shall be explained in detail. **The Vendor shall not construe this paragraph as inviting deviation or implying that any deviation will be acceptable. Offers of alternative or equivalent goods may be rejected; and if offered, must be supported by independent documentary verification of equivalence to the specified goods.**
- 5) Statement of Work (SOW). One or more Statements of Work will be utilized in completing the scope of work identified in this RFP. The 911 Board intends to develop an initial SOW during negotiations, and therefore may negotiate with more than one Bidder. The Board anticipates additional SOWs during the term of the contract as may be necessary or proper to complete the planned scope of work. The Contractor, at a minimum, must achieve and maintain the performance objectives listed below, consistent with awarding this RFP. Bidders must include a response to the Scope of Work below in the form of a draft SOW, and may propose additional or optional project objectives for consideration. The tasks described below are the Scope of Work.
  - a. The awarded Vendor shall assist the North Carolina 911 Board in developing a Concept of Operations document describing the broad goals, general user needs, and a high-level view of the operating environment that the North Carolina 911 Board is attempting to achieve with an RFP for an ESInet and Next Generation functional systems. The Concept of Operations will also serve to identify the operational scenarios to be supported and outline a transition plan for the orderly and error free migration to new functional platforms. Ultimately the Concept of

Operations will form the basis for the general system design and requirements expressed in the RFP to the solution vendors.

- b. The awarded Vendor shall develop a cost analysis report to include financial and operational alternatives based upon the Concept of Operations.
  - c. Based upon the Concept of Operations and consistent with NENA i3 standards, requirements, and best practices the awarded Vendor shall develop conceptual designs for:
    - i. A statewide ESI (IP) network
    - ii. A GIS routing solution
    - iii. A hosted call handling solutions
    - iv. A Network Operations Center and Help Desk (NOC) solution
    - v. A CAD interoperability solution
    - vi. A radio interoperability solution
  - d. The awarded Vendor will prepare documentation and other reports which the 911 Board will submit for project management purposes; such are necessary for the overall project by State Government. See N.C. General Statutes 147-33.72A – 147-33.72H for the statutory authority regarding IT project management and oversight. Additional information for the State's Enterprise Project Management Office (EPMO) may be found at: <http://www.epmo.scio.nc.gov/>
  - e. The awarded Vendor shall assist in the development of an RFP. The RFP will be based upon the decisions made in the Concept of Operations, financial and operational considerations, and the conceptual designs. The RFP shall be for an ESInet, a GIS Solution, a Hosted System solution, a NOC, a CAD interoperability solution, and a radio network interoperability solution. In addition to their technical expertise the awarded Vendor will contribute their experiences in other states so that the RFP anticipates and avoids problems experienced by those states.
  - f. The awarded Vendor may assist the 911 Board as a subject matter expert during evaluation of the RFP responses. This may include assisting in negotiating the contract(s) with the selected provider(s) and evaluating solutions to optimize the terms of the contractual relationship with the solution provider(s). If the 911 Board requests such assistance, the awarded Vendor shall:
    - i. help ascertain the validity of RFP responses
    - ii. advise the 911 Board as to the practicality and achievability of vendor proposals
    - iii. participate in all the vendor meetings
    - iv. identify and ensure that the RFP responses are based upon open standards, are in compliance with all applicable state and federal laws, and
    - v. comply with NENA i3 standards, requirements, and best practices.
  - g. Some tasks and services cannot be clearly defined at this time. The awarded Vendor should be prepared to perform related tasks in addition to the ones outlined here.
- 6) Requirements/Specifications: Compliance with technical specifications is mandatory where stated as "shall" or "must", and desired where stated as "desired" or "preferred."
- a. Bidder Qualifications
    - i. Bidders to this RFP must be a professional organization and independent from 911 product vendors, value-added resellers (VARs), local exchange carriers (LECs), and 911 service providers, including subsidiaries and partners of the aforementioned business

categories. Independent is defined as having no control or management affiliation to any potential solution vendor and receiving revenue only from client fees.

- ii. Bidders must have experience providing 911 operations system consulting for public safety communications systems for a minimum of 3 years. Bidders must have experience negotiating multiple vendor contracts and developing detailed scopes of work for complex, multi-faceted projects.
  - iii. The State prefers a Bidder having demonstrated experience with its proposed staff in providing public safety consulting for at least one statewide or large regional ESInet and/or at least one statewide or large Next Generation 911 system.
  - iv. The State prefers a Bidder having operational experience with Network Operation Centers (NOCs) and methods of monitoring ESInet performance.
  - v. Bidders must have experience with 911 hosted call handling solutions.
  - vi. The State prefers a Bidder having experience with Network Operation Center and Help Desk operations providing operational support to PSAPs.
  - vii. Bidders must have experience with public safety CAD systems, CAD interoperability, and CAD interoperability vendors.
  - viii. Bidders must have experience with public safety communications, radio interoperability, and radio interoperability vendors.
  - ix. Bidders must demonstrate knowledge of NENA i3 GIS routing.
  - x. Bidders must demonstrate knowledge and operational experience with Customer Premise Equipment (CPE) and NENA i3 interfaces, procurement of Next Generation components, and conducting due diligence activities.
  - xi. Bidders must be familiar with all aspects of public safety communications operations and system applications. Bidders shall demonstrate knowledge in the trends and directions of public safety radio networks, automated systems, facilities, and operations.
- b. Conflicts of Interest
- i. The awarded Vendor under this RFP will be excluded from responding to any subsequent RFPs in the interest of maintaining a high level of impartiality the integrity of the project.
  - ii. Bidders to this RFP will disclose any client fees within the last 24 months received from a potential solution Vendor.
- c. Bidder Personnel
- i. Bidders must have in-house network engineers, telecommunications specialists, CAD specialists, radio specialists, and GIS specialists.
  - ii. It is preferred that Bidders' staff members have NENA Emergency Number Professional (ENP) or APCO Registered Public-Safety Leader (RPL) certifications and these staff members must have practical experience in system planning and implementation.
  - iii. Bidders must have network professionals with experience designing 911 solutions utilizing multi-protocol label switching (MPLS) IP networks. Bidders must have program management experience with and technical knowledge of current time division multiplex (TDM) and Voice over IP (VoIP) technologies. Bidders must have extensive network and router experience of 911 telephony and data applications.



- iv. Bidders must have professionals on staff with experience in public safety radio communications. Experience designing network solutions that could support the cohabitation of radio and 911 traffic over an IP network is preferred.
- v. Bidders must have GIS professionals who are well versed in current GIS design and utilization and well versed in NENA i3 GIS developing standards.
- vi. Bidders must be thoroughly knowledgeable of NENA i3 standards as well as NENA and APCO recommendation, information, and best practices documents. Participation in NENA standards development, or working group committees is preferred.
- d. **Bidder References:** Bidders must provide project references of similar, recent projects for contact and review by the North Carolina 911 Board.
- e. Bidders must provide lessons learned from project experiences relevant to the scope and purposes set forth in this RFP. The State requests concise examples consistent with RFP Section III, 5) Scope of Work and 6) Specifications, as presented above; and describe systems, installations, problems encountered, how such were overcome, and suggested preventive measures.

#### **IV. Section IV. Cost Proposal**

- 1) The Vendor must list and describe any applicable costs for the services proposed. Costs must conform to the following:
  - a) Costs are all-inclusive. Any contingent costs must be presented as such together with necessary contingencies, staffing rates may be presented on hourly or task bases but shall be reconciled against subsequent Statements of Work and Deliverables.
  - b) Unlimited phone technical support for the technical staff.
  - c) The consulting and other value added service hourly rates or costs shall be listed separately by type of service. Travel and lodging expenses, if any, must be thoroughly described; and are limited by the State's General Terms and Conditions for Goods and Services.

#### **V. Section V. Other Requirements and Special Terms**

- 1) **VENDOR UTILIZATION OF WORKERS OUTSIDE U.S.:** In accordance with NC General Statute 147-33.97, the Vendor must detail in the bid response, the manner in which it intends to utilize resources or workers. The State of North Carolina will evaluate the additional risks, costs, and other factors associated with such utilization prior to making an award for any such Vendor's proposal. The Vendor shall provide the following for any proposal or actual utilization or contract performance:
  - a) The location of work performed under a state contract by the Vendor, any subcontractors, employees, or other persons performing the contract and whether any of this work will be performed outside the United States
  - b) The corporate structure and location of corporate employees and activities of the Vendors, its affiliates or any other subcontractors
  - c) Notice of the relocation of the Vendor, employees of the Vendor, subcontractors of the Vendor, or other persons performing services under a state contract outside of the United States
  - d) Any Vendor or subcontractor providing call or contact center services to the State of North Carolina shall disclose to inbound callers the location from which the call or contact center services are being provided

Will any work under this contract be performed outside the United States?

Where will services be performed: \_\_\_\_\_ YES \_\_\_\_\_ NO \_\_\_\_\_

## 2) Special Terms and Conditions

- a) Financial Statements. The Vendor shall provide evidence of financial stability with its response to this RFP as further described hereinbelow. As used herein, Financial Statements shall exclude tax returns and compiled statements.
  - b) For a publicly traded company, Financial Statements for the past 3 fiscal years, including at a minimum, income statements, balance sheets, and statement of changes in financial position or cash flows. If three (3) years of financial statements are not available, this information shall be provided to the fullest extent possible, but not less than one year. If less than 3 years, Vendor must explain the reason why they are not available.
  - c) For a privately held company, when certified audited financial statements are not prepared: a written statement from the company's certified public accountant stating the financial condition, debt-to-asset ratio for the past three (3) years and any pending actions that may affect the company's financial condition.
  - d) The State may, in its sole discretion, accept evidence of financial stability other than Financial Statements for the purpose of evaluating Vendors' responses to this RFP. The State reserves the right to determine whether the substitute information meets the requirements for Financial Information sufficiently to allow the State to evaluate the sufficiency of financial resources and the ability of the business to sustain performance of the contract award. Scope Statements issued may require the submission of Financial Statements and specify the number of years to be provided, the information to be provided, and the most recent date required.
- 3) Security and Background Checks – The Agency reserves the right to conduct a security background check or otherwise approve any employee or agent provided by Vendor, and to refuse access to or require replacement of any such personnel for cause, including, but not limited to, technical or training qualifications, quality of work or change in security status or non-compliance with the Agency's security or other requirements.
- 4) Confidentiality of Data and Information – All RFI responses, information marked as confidential or proprietary, financial, statistical, personnel, technical and other data and information relating to the State's operation which are designated confidential by the State and made available to the Vendor in order to carry out this Contract, or which become available to the Vendor in carrying out this Contract, shall be protected by the Vendor from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the State. The identification of all such confidential data and information as well as the State's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the State in writing to the Vendor. If the methods and procedures employed by the Vendor for the protection of the Vendor's data and information are deemed by the State to be adequate for the protection of the State's confidential information, such methods and procedures may be used, with the written consent of the State, to carry out the intent of this section. The Vendor shall not be required under the provisions of this section to keep confidential, (1) information generally available to the public, (2) information released by the State generally, or to the Vendor without restriction, (3) information independently developed or acquired by the Vendor or its personnel without reliance in any way on otherwise protected information of the State. Notwithstanding the foregoing restrictions, the Vendor and its personnel may use and disclose any information which it is otherwise required by law to disclose, but in each case only after the State has been so notified, and has had the opportunity, if possible, to obtain reasonable protection for such information in connection with such disclosure.
- 5) Meetings – The Vendor is required to meet with Agency personnel, or designated representatives, to resolve technical or contractual problems that may occur during the term of the Contract. Meetings will occur as problems arise and will be coordinated by the Agency. The Vendor will be given reasonable and sufficient notice of meeting dates, times, and locations. Face to face meetings are desired. However, at

the Vendor's option and expense, a conference call meeting may be substituted. Consistent failure to participate in problem resolution meetings, two (2) consecutive missed or rescheduled meetings, or failure to make a good faith effort to resolve problems, may result in termination of the Contract.

- 6) Unanticipated Tasks – In the event that additional work must be performed that was wholly unanticipated, and that is not specified in this Contract, but which in the opinion of both parties is necessary to the successful accomplishment of the contracted scope of work, the procedures outlined in this article will be followed. For each item of unanticipated work, Vendor shall prepare a work authorization in accordance with the State's practices and procedures.
- a) It is understood and agreed by both parties that all of the terms and conditions of this Contract shall remain in force with the inclusion of any work authorization. A work authorization shall not constitute a contract separate from this Contract, nor in any manner amend or supersede any of the other terms or provisions of this Contract or any amendment hereto.
  - b) Each work authorization shall comprise a detailed statement of the purpose, objective, or goals to be undertaken by Vendor, the job classification or approximate skill level or sets of the personnel required, an identification of all significant material then known to be developed by Vendor's personnel as a Deliverable, an identification of all significant materials to be delivered by the State to Vendor's personnel, an estimated time schedule for the provision of the services by Vendor, completion criteria for the work to be performed, the name or identification of Vendor's personnel to be assigned, the Vendor's estimated work hours required to accomplish the purpose, objective or goals, the Vendor's billing rates and units billed, and the Vendor's total estimated cost of the work authorization.
  - c) All work authorizations must be submitted for review and approval by the procurement office that approved the original Contract and procurement. This submission and approval must be completed prior to execution of any work authorization documentation or performance thereunder. All work authorizations must be written and signed by Vendor and the State prior to beginning work.
  - d) The State has the right to require Vendor to stop or suspend performance under the "Stop Work" provision of the General Terms and Conditions for Goods and Related Services.
  - e) Vendor shall not expend Personnel resources at any cost to the State in excess of the estimated work hours unless this procedure is followed: If, during performance of the work, the Vendor determines that a work authorization to be performed under this Contract cannot be accomplished within the estimated work hours, the Vendor will be required to complete the work authorization in full. Upon receipt of such notification, the State may:
    - i.) Authorize the Vendor to expend the estimated additional work hours or service in excess of the original estimate necessary to accomplish the work authorization, or
    - ii.) Terminate the work authorization, or
    - iii.) Alter the scope of the work authorization in order to define tasks that can be accomplished within the remaining estimated work hours.
    - iv.) The State will notify Vendor in writing of its election within seven (7) calendar days after receipt of the Vendor's notification. If notice of the election is given to proceed, the Vendor may expend the estimated additional work hours or services.

## **VI. Section VI. Proposal Content and Organization**

- 1) **Proposal Format.** The Execution page of this RFP must be placed at the front of the Proposal. Each page should be numbered. The proposal should contain a table of contents, which cross-references the RFP requirement and the specific page of the response in the Vendor's proposal. All proposals should be typewritten on standard 8 ½ x 11 paper (larger paper is permissible for charts, spreadsheets, etc.) and placed within a binder with tabs delineating each section.
- 2) **Information and Descriptive Literature.** Vendor must furnish all information requested; and if response spaces are provided in this document, the Vendor shall furnish said information in the spaces provided. Further, if required elsewhere in this proposal, each Vendor must submit with their proposal sketches, descriptive literature and/or complete specifications covering the products offered. References to literature submitted with a previous proposal will not satisfy this provision. Proposals that do not comply with these requirements may be rejected.
- 3) **Vendors are strongly encouraged to adhere to the following general instructions in order to bring clarity and order to the proposal and subsequent evaluation process:**
  - a) Elaborate proposals in the form of brochures or other presentations beyond that necessary to present a complete and effective proposal are not desired.
  - b) The response should be complete and comprehensive with a corresponding emphasis on being concise and clear.
- 4) **Proposal Organization:** The proposal should be organized and indexed in the following format and should contain, at a minimum, all listed items in the sequence indicated.
  - a) **Letter of Transmittal** - Each proposal must be accompanied by a letter of transmittal that provides the following information:
    - i) Identify the submitting organization;
    - ii) Identify the name, title, telephone and fax number, along with an e-mail address of the person authorized by the organization to contractually obligate the organization;
    - iii) Identify the name, title, telephone and fax number, along with an e-mail address of the person authorized to negotiate the contract on behalf of the organization;
    - iv) Identify the names, titles, telephone and fax number, along with an e-mail address of the person to be contacted for clarification;
    - v) Acknowledge receipt of any and all amendments to this RFP.
  - b) **Table of Contents**
  - c) **Proposal Summary.** A proposal summary may be included by Vendors to provide the Evaluation Committee with an overview of the technical and business features of the proposal; however, this material will not be used in the evaluation process unless specifically referenced from other portions of the Vendor's proposal
  - d) **Response to Requirements/Specifications**
  - e) **Proposal Content.** Demonstrate compliance with all mandatory conditions, requirements and terms of performance. Clearly state your understanding of the problem(s) presented by this RFP.
    - i) Response to mandatory and desired technical specifications
    - ii) Cost proposal
  - f) **Detailed description of Vendor's firm** should include all of the following:
    - i) Full name, address, and telephone number of the organization;
    - ii) Date established;
    - iii) Background of firm;
    - iv) Ownership (public company, partnership, subsidiary, etc.);
    - v) If incorporated, state of incorporation must be included.

- vi) Number of full-time employees on January 1st for the last three years or for the duration that the Vendor's firm has been in business, whichever is less.
  - g) Conflict of Interest:
    - i. Provide a statement that no assistance in preparing the response was received from any current or former employee of the State of North Carolina whose duties relate(d) to this RFP, unless such assistance was provided by the state employee in his or her official public capacity and that neither such employee nor any member of his or her immediate family has any financial interest in the outcome of this RFP;
    - ii. State if the Vendor or any employee of the Vendor is related by blood or marriage to an Agency employee or resides with an Agency employee. If there are such relationships, list the names and relationships of said parties. Include the position and responsibilities within the Vendor's organization of such Vendor employees; and
    - iii. State the employing State Agency, individual's title at that State Agency, and termination date.
  - h) Errata and Exceptions. Any errata or exceptions must be stated on a separate page, labeled "Errata and/or Exceptions" with references to the corresponding terms or provisions of the Solicitation.
  - i) Other Supporting Material Including Technical System Documentation
  - j) Training and Other Materials, Samples or Examples
  - k) Within each section of their proposal, Vendors should address the items in the order in which they appear in this RFP. Forms, if any provided in the RFP, must be completed and included in the appropriate section of the proposal. All discussion of proposed costs, rates, or expenses must be presented with the cost response.
- 5) Any proposal that does not adhere to these requirements may be deemed non-responsive and rejected on that basis.
- 6) Vendors may attach other materials that they feel may improve the quality of their responses. However, these materials should be included as items in a separate appendix.

## **VII. Section VII. North Carolina Information Technology Procurement Office General Terms and Conditions for Goods and Related Services**

**Definitions:** As used herein;

Purchasing State Agency or Agency shall mean the Agency purchasing the goods or services.

State shall mean the State of North Carolina, the Office of Information Technology Services as an Agency or in its capacity as the Award Authority.

**1) Standards:** Vendor will provide and maintain a quality assurance system or program that includes any Deliverables and will tender to the State only those Deliverables that have been inspected and found to conform to the requirements of this Contract. All Deliverables are subject to operation, certification or inspection, and accessibility requirements as required by:

- State or Federal Regulation,
  - The Chief Information Officer's (CIO) policy or regulation, or
  - Acceptance with appropriate standards of operations or uses of said Deliverables as may be shown by identification markings or other means of the appropriate certifying standards organization.
- a) **Site Preparation:** Reserved.
  - b) **Goods Return:** Reserved.
  - c) **Specifications:** The apparent silence of the specifications as to any detail, or the apparent omission of detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail and only material and workmanship of the first quality may be used. Upon any notice of noncompliance provided by the State, Vendor shall supply proof of compliance with the specifications. Vendor must provide

written notice of its intent to deliver alternate or substitute products, goods or Deliverables. Alternate or substitute products, goods or Deliverables may be accepted or rejected in the sole discretion of the State; and any such alternates or substitutes must be accompanied by Vendor's certification and evidence satisfactory to the State that the function, characteristics, performance and endurance will be equal or superior to the original Deliverables specified.

**2) Warranties:** Reserved.

**3) Personnel:** Vendor shall not substitute key personnel assigned to the performance of this Contract without prior written approval by the Agency Contract Administrator. Any desired substitution shall be noticed to the Agency's Contract Administrator accompanied by the names and references of Vendor's recommended substitute personnel. The Agency will approve or disapprove the requested substitution in a timely manner. The Agency may, in its sole discretion, terminate the services of any person providing services under this Contract. Upon such termination, the Agency may request acceptable substitute personnel or terminate the contract services provided by such personnel.

- a) Vendor personnel shall perform their duties on the premises of the State, during the State's regular work days and normal work hours, except as may be specifically agreed otherwise, established in the specification, or statement of work.
- b) This contract shall not prevent Vendor or any of its personnel supplied under this Contract from performing similar services elsewhere or restrict Vendor from using the personnel provided to the State, provided that:
  - i) Such use does not conflict with the terms, specifications or any amendments to this Contract, or
  - ii) Such use does not conflict with any procurement law, regulation or policy or
  - iii) Such use does not conflict with any non-disclosure agreement, or term thereof, by and between the State and Vendor or Vendor's personnel.
- c) **Qualified Personnel:** Each party shall provide sufficient, qualified, knowledgeable personnel capable of: (i) performing obligations set forth in this Agreement and each SOW; (ii) making timely decisions necessary to move the Services forward; (iii) participating in the project and assisting Vendor in rendering the Services; and (iv) facilitating development, testing and implementation of Vendor software, if applicable. Vendor warrants that qualified personnel will perform the services in a professional manner. As used in this Paragraph, "professional manner" means that the personnel performing the services will be of a skill and competence consistent with prevailing norms of company providers in the information technology industry.

**4) Subcontracting:** The Vendor may subcontract the performance of required services with other Vendors or third parties, or change subcontractors, only with the prior written consent of the contracting authority. Vendor shall provide the State with complete copies of any agreements made by and between Vendor and all subcontractors. The selected Vendor remains solely responsible for the performance of its subcontractors. Subcontractors, if any, shall adhere to the same standards required of the selected Vendor. Any contracts made by the Vendor with a subcontractor shall include an affirmative statement that the State is an intended third party beneficiary of the contract; that the subcontractor has no agreement with the State; and that the State shall be indemnified by the Vendor for any claim presented by the subcontractor. Notwithstanding any other term herein, Vendor shall timely exercise its contractual remedies against any non-performing subcontractor and, when appropriate, substitute another subcontractor.

**5) Vendor's Representation:** Vendor warrants that qualified personnel will provide services in a professional manner. "Professional manner" means that the personnel performing the services will possess the skill and competence consistent with the prevailing business standards in the information technology industry. Vendor agrees that it will not enter any agreement with a third party that might abridge any rights of the State under this Contract. Vendor will serve as the prime Vendor under this Contract. Should the State approve any subcontractor(s), the Vendor shall be legally responsible for the performance and payment of the subcontractor(s). Names of any third party Vendors or subcontractors of Vendor may appear for purposes of convenience in Contract documents; and shall not limit Vendor's obligations hereunder. Third party subcontractors, if approved, may serve as subcontractors to Vendor. Vendor will retain executive representation for functional and technical expertise as needed in order to incorporate any work by third party subcontractor(s).

- a) **Intellectual Property.** Vendor has the right to provide the Services and Deliverables without violating or infringing any law, rule, regulation, copyright, patent, trade secret or other proprietary right of any third party. Vendor represents that its Services and Deliverables are not the subject of any actual or threatened actions arising from, or alleged under, any intellectual property rights of any third party.
- b) **Inherent Services.** If any Services, Deliverables, functions, or responsibilities not specifically described in this Contract are required for Vendor's proper performance, provision and delivery of the Service and Deliverables



pursuant to this Contract, or are an inherent part of or necessary sub-task included within the Service, they will be deemed to be implied by and included within the scope of the Contract to the same extent and in the same manner as if specifically described in the Contract. Unless otherwise expressly provided in the Contract, Vendor will furnish all of its own necessary management, supervision, labor, facilities, furniture, computer and telecommunications equipment, software, supplies and materials necessary for the Vendor to provide and deliver the Services and Deliverables.

c) Vendor warrants that it has the financial capacity to perform and to continue perform its obligations under the Contract; that Vendor has no constructive or actual knowledge of an actual or potential legal proceeding being brought against Vendor that could materially adversely affect performance of this Contract; and that entering into this Contract is not prohibited by any contract, or order by any court of competent jurisdiction.

d) Warranty as to Equipment; Hardware. Vendor warrants that the equipment and hardware that it provides pursuant to this Contract shall be free from defects in materials, in good working order and be maintained in good working order.

**6) Software License:** Reserved.

**7) Maintenance/Support Services:** Reserved.

**8) Travel Expenses:** All travel expenses should be included in the Vendor's proposed costs. Separately stated travel expenses will not be reimbursed.

In the event that the Vendor may be eligible to be reimbursed for travel expenses arising under the performance of this Contract, reimbursement will be at the out-of-state rates set forth in GS §138-6; as amended from time to time. Vendor agrees to use the lowest available airfare not requiring a weekend stay and to use the lowest available rate for rental vehicles. All Vendor incurred travel expenses shall be billed on a monthly basis, shall be supported by receipt and shall be paid by the State within thirty (30) days after invoice approval. Travel expenses exceeding the foregoing rates shall not be paid by the State. The State will reimburse travel allowances only for days on which the Vendor is required to be in North Carolina performing services under this Contract.

**9) Governmental Restrictions:** In the event any restrictions are imposed by governmental requirements that necessitate alteration of the material, quality, workmanship, or performance of the Deliverables offered prior to delivery thereof, the Vendor shall provide written notification of the necessary alteration(s) to the Agency Contract Administrator. The State reserves the right to accept any such alterations, including any price adjustments occasioned thereby, or to cancel the Contract. The State may advise Vendor of any restrictions or changes in specifications required by North Carolina legislation, rule or regulatory authority that require compliance by the State. In such event, Vendor shall use its best efforts to comply with the required restrictions or changes. If compliance cannot be achieved by the date specified by the State, the State may terminate this Contract and compensate Vendor for sums due under the Contract.

**10) Prohibition Against Contingent Fees and Gratuities:** Vendor warrants that it has not paid, and agrees not to pay, any bonus, commission, fee, or gratuity to any employee or official of the State for the purpose of obtaining any contract or award issued by the State. Vendor further warrants that no commission or other payment has been or will be received from or paid to any third party contingent on the award of any contract by the State, except as shall have been expressly communicated to the State Purchasing Agent in writing prior to acceptance of the Contract or award in question. Each individual signing below warrants that he or she is duly authorized by their respective Party to sign this Contract and bind the Party to the terms and conditions of this Contract. Vendor and their authorized signatory further warrant that no officer or employee of the State has any direct or indirect financial or personal beneficial interest, in the subject matter of this Contract; obligation or contract for future award of compensation as an inducement or consideration for making this Contract. Subsequent discovery by the State of non-compliance with these provisions shall constitute sufficient cause for immediate termination of all outstanding contracts. Violations of this provision may result in debarment of the Vendor(s) as permitted by 9 NCAC 06B.1207, or other provision of law.

**11) Availability of Funds:** Any and all payments to Vendor are expressly contingent upon and subject to the appropriation, allocation and availability of funds to the Agency for the purposes set forth in this Contract. If this Contract or any Purchase Order issued hereunder is funded in whole or in part by federal funds, the Agency's performance and payment shall be subject to and contingent upon the continuing availability of said federal funds for the purposes of the Contract or Purchase Order. If the term of this Contract extends into fiscal years, subsequent to that in which it is approved, such continuation of the Contract is expressly contingent upon the appropriation, allocation and availability of funds by the N.C. Legislature for the purposes set forth in the Contract. If funds to effect payment are not available, the Agency will provide written notification to Vendor. If the Contract is terminated under this paragraph, Vendor agrees to take back any affected Deliverables and software not yet delivered under this Contract, terminate any services supplied to

the Agency under this Contract, and relieve the Agency of any further obligation thereof. The State shall remit payment for Deliverables and services accepted prior to the date of the aforesaid notice in conformance with the payment terms.

**12) Payment Terms:** Payment terms are Net 30 days after receipt of correct invoice or acceptance of the Deliverables, whichever is later. The Purchasing State Agency is responsible for all payments under the Contract. No additional charges to the Agency will be permitted based upon, or arising from, the Agency's use of a Business Procurement Card. The State may exercise any and all rights of Set Off as permitted in Chapter 105A-1 et seq. of the N.C. General Statutes and applicable Administrative Rules. Upon Vendor's written request of not less than 30 days and approval by the State or Agency, the Agency may:

- a) Forward the Vendor's payment check(s) directly to any person or entity designated by the Vendor, or
- b) Include any person or entity designated in writing by Vendor as a joint payee on the Vendor's payment check(s), however
- c) In no event shall such approval and action obligate the State to anyone other than the Vendor and the Vendor shall remain responsible for fulfillment of all Contract obligations.

**13) Acceptance Criteria:** In the event acceptance of Deliverables is not described in additional Contract documents, the State shall have the obligation to notify Vendor, in writing ten calendar days following delivery of any Deliverable described in the Contract if it is not acceptable. The notice shall specify in reasonable detail the reason(s) a deliverable is unacceptable. Acceptance by the State shall not be unreasonably withheld; but may be conditioned or delayed as required for installation and/or testing of Deliverables. Final acceptance is expressly conditioned upon completion of all applicable inspection and testing procedures. Should the Deliverables fail to meet any specifications or acceptance criteria the State may exercise any and all rights hereunder, including such rights provided by the Uniform Commercial Code as adopted in North Carolina. Deliverables discovered to be defective or failing to conform to the specifications may be rejected upon initial inspection or at any later time if the defects contained in the Deliverables or non-compliance with the specifications was not reasonably ascertainable upon initial inspection. If the Vendor fails to promptly cure the defect or replace the Deliverables, the State reserves the right to cancel the Purchase Order, contract with a different Vendor, and to invoice the original Vendor for any differential in price over the original Contract price. When Deliverables are rejected, the Vendor must remove the rejected Deliverables from the premises of the State Agency within seven (7) calendar days of notification, unless otherwise agreed by the State Agency. Rejected items may be regarded as abandoned if not removed by Vendor as provided herein.

**14) Equal Employment Opportunity:** Vendor shall comply with all Federal and State requirements concerning fair employment and employment of the disabled, and concerning the treatment of all employees without regard to discrimination by reason of race, color, religion, sex, national origin or physical disability.

**15) Inspection at Vendor's Site:** The State reserves the right to inspect, during Vendor's regular business hours at a reasonable time, upon notice of not less than two (2) weeks, and at its own expense, the prospective Deliverables comprising equipment or other tangible goods, or the plant or other physical facilities of a prospective Vendor prior to Contract award, and during the Contract term as necessary or proper to ensure conformance with the specifications/requirements and their adequacy and suitability for the proper and effective performance of the Contract.

**16) Advertising/Press Release:** The Vendor absolutely shall not publicly disseminate any information concerning the Contract without prior written approval from the State or its Agent. For the purpose of this provision of the Contract, the Agent is the Purchasing Agency Contract Administrator unless otherwise named in the solicitation documents.

**17) Confidentiality:** In accordance with 9 NCAC 06B.0103, 06B.0207 and 06B.1001 and to promote maximum competition in the State competitive bidding process, the State may maintain the confidentiality of certain types of information described in N.C. Gen. Stat. §132-1 et seq. Such information may include trade secrets defined by N.C. Gen. Stat. §66-152 and other information exempted from the Public Records Act pursuant to N.C. Gen. Stat. §132-1.2. Vendor may designate appropriate portions of its response as confidential, consistent with and to the extent permitted under the Statutes and Rules set forth above, by marking the top and bottom of pages containing confidential information with a legend in boldface type "**CONFIDENTIAL**". By so marking any page, the Vendor warrants that it has formed a good faith opinion, having received such necessary or proper review by counsel and other knowledgeable advisors that the portions marked confidential meet the requirements of the Rules and Statutes set forth above. **However, under no circumstances shall price information be designated as confidential.** The State may serve as custodian of Vendor's confidential information and not as an arbiter of claims against Vendor's assertion of confidentiality. If an action is brought pursuant to N.C. Gen. Stat. §132-9 to compel the State to disclose information marked confidential, the Vendor agrees that it will intervene in the action through its counsel and participate in defending the State, including any public official(s)

or public employee(s). The Vendor agrees that it shall hold the State and any official(s) and individual(s) harmless from any and all damages, costs, and attorneys' fees awarded against the State in the action. The State agrees to promptly notify the Vendor in writing of any action seeking to compel the disclosure of Vendor's confidential information. The State shall have the right, at its option and expense, to participate in the defense of the action through its counsel. The State shall have no liability to Vendor with respect to the disclosure of Vendor's confidential information ordered by a court of competent jurisdiction pursuant to N.C. Gen. Stat. §132-9 or other applicable law.

- a) Care of Information: Vendor agrees to use commercial best efforts to safeguard and protect any data, documents, files, and other materials received from the State or the Agency during performance of any contractual obligation from loss, destruction or erasure.
- b) Vendor warrants that all its employees and any approved third party Vendors or subcontractors are subject to a non-disclosure and confidentiality agreement enforceable in North Carolina. Vendor will, upon request of the State, verify and produce true copies of any such agreements. Production of such agreements by Vendor may be made subject to applicable confidentiality, non-disclosure or privacy laws; provided that Vendor produces satisfactory evidence supporting exclusion of such agreements from disclosure under the N.C. Public Records laws in NCGS §132-1 et. seq. The State may, in its sole discretion, provide a non-disclosure and confidentiality agreement satisfactory to the State for Vendor's execution. The State may exercise its rights under this subparagraph as necessary or proper, in its discretion, to comply with applicable security regulations or statutes including, but not limited to 26 USC 6103 and IRS Publication 1075, (Tax Information Security Guidelines for Federal, State, and Local Agencies), HIPAA, 42 USC 1320(d) (Health Insurance Portability and Accountability Act), any implementing regulations in the Code of Federal Regulations, and any future regulations imposed upon the Office of Information Technology Services or the N.C. Department of Revenue pursuant to future statutory or regulatory requirements.
- c) Nondisclosure: Vendor agrees and specifically warrants that it, its officers, directors, principals and employees, and any subcontractors, shall hold all information received during performance of this Contract in the strictest confidence and shall not disclose the same to any third party without the express written approval of the State.

**18) Deliverables:** Deliverables, as used herein, shall comprise all services, work product, project materials, including goods, software licenses, data, and documentation created during the performance or provision of services hereunder. Deliverables are the property of the State of North Carolina. Proprietary Vendor materials licensed to the State shall be identified to the State by Vendor prior to use or provision of services hereunder and shall remain the property of the Vendor. Deliverables include "Work Product" and means any expression of Vendor's findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, enhancements, and other technical information; but not software used by Vendor unless such is provided by the State.

- a) State Property and Intangibles Rights: The parties acknowledge and agree that the State shall own all right, title and interest in and to the copyright in any and all work product, technical information, specifications, drawings, records, documentation, data and other work products first originated and prepared by the Vendor for delivery to the State. To the extent that any Vendor Technology is contained in any of the Deliverables, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's internal business purposes. Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the State.

**19) Late Delivery, Back Order:** Vendor shall advise the Agency contact person or office immediately upon determining that any Deliverable will not, or may not, be delivered at the time or place specified. Together with such notice, Vendor shall state the projected delivery time and date. In the event the delay projected by Vendor is unsatisfactory, the Agency shall so advise Vendor and may proceed to procure substitute Deliverables or services.

**20) Patent, Copyright, and Trade Secret Protection:**

- a) Vendor has created, acquired or otherwise has rights in, and may, in connection with the performance of services for the State, employ, provide, create, acquire or otherwise obtain rights in various concepts, ideas, methods, methodologies, procedures, processes, know-how, techniques, models, templates and general purpose consulting and software tools, utilities and routines (collectively, the "Vendor Technology"). To the extent that any Vendor Technology is contained in any of the Deliverables including any derivative works, the Vendor hereby grants the State a royalty-free, fully paid, worldwide, perpetual, non-exclusive license to use such Vendor Technology in connection with the Deliverables for the State's purposes.

- b) Vendor shall not acquire any right, title and interest in and to the copyrights for goods, any and all software, technical information, specifications, drawings, records, documentation, data or derivative works thereof, or other work products provided by the State to Vendor. The State hereby grants Vendor a royalty-free, fully paid, worldwide, perpetual, non-exclusive license for Vendor's internal use to non-confidential Deliverables first originated and prepared by the Vendor for delivery to the State.
- c) The Vendor, at its own expense, shall defend any action brought against the State to the extent that such action is based upon a claim that the services or Deliverables supplied by the Vendor, or the operation of such Deliverables pursuant to a current version of Vendor-supplied software, infringes a patent, or copyright or violates a trade secret in the United States. The Vendor shall pay those costs and damages finally awarded against the State in any such action. Such defense and payment shall be conditioned on the following:
- i) That the Vendor shall be notified within a reasonable time in writing by the State of any such claim; and,
  - ii) That the Vendor shall have the sole control of the defense of any action on such claim and all negotiations for its settlement or compromise provided, however, that the State shall have the option to participate in such action at its own expense.
- d) Should any services or software supplied by Vendor, or the operation thereof become, or in the Vendor's opinion are likely to become, the subject of a claim of infringement of a patent, copyright, or a trade secret in the United States, the State shall permit the Vendor, at its option and expense, either to procure for the State the right to continue using the goods/hardware or software, or to replace or modify the same to become noninfringing and continue to meet procurement specifications in all material respects. If neither of these options can reasonably be taken, or if the use of such goods/hardware or software by the State shall be prevented by injunction, the Vendor agrees to take back such goods/hardware or software, and refund any sums the State has paid Vendor less any reasonable amount for use or damage and make every reasonable effort to assist the State in procuring substitute Deliverables. If, in the sole opinion of the State, the return of such infringing Deliverables makes the retention of other items of Deliverables acquired from the Vendor under this Contract impractical, the State shall then have the option of terminating the Contract, or applicable portions thereof, without penalty or termination charge. The Vendor agrees to take back such Deliverables and refund any sums the State has paid Vendor less any reasonable amount for use or damage.
- e) Vendor will not be required to defend or indemnify the State if any claim by a third party against the State for infringement or misappropriation (i) results from the State's alteration of any Vendor-branded product or Deliverable, or (ii) results from the continued use of the good(s) or Services and Deliverables after receiving notice they infringe a trade secret of a third party.
- f) Nothing stated herein, however, shall affect Vendor's ownership in or rights to its preexisting intellectual property and proprietary rights.

**21) Access to Persons and Records:** Pursuant to N.C. General Statute 147-64.7, the Agency, the State Auditor, appropriate federal officials, and their respective authorized employees or agents are authorized to examine all books, records, and accounts of the Vendor insofar as they relate to transactions with any department, board, officer, commission, institution, or other Agency of the State of North Carolina pursuant to the performance of this Contract or to costs charged to this Contract. The Vendor shall retain any such books, records, and accounts for a minimum of three (3) years after the completion of this Contract. Additional audit or reporting requirements may be required by any Agency, if in the Agency's opinion, such requirement is imposed by federal or state law or regulation.

**22) Assignment:** Vendor may not assign this Contract or its obligations hereunder except as permitted by 09 NCAC 06B.1003 and this Paragraph. Vendor shall provide reasonable notice of not less than thirty (30) days prior to any consolidation, acquisition, or merger. Any assignee shall affirm this Contract attorning to the terms and conditions agreed, and that Vendor shall affirm that the assignee is fully capable of performing all obligations of Vendor under this Contract. An assignment may be made, if at all, in writing by the Vendor, Assignee and the State setting forth the foregoing obligation of Vendor and Assignee.

**23) Insurance Coverage:** During the term of the Contract, the Vendor at its sole cost and expense shall provide commercial insurance of such type and with such terms and limits as may be reasonably associated with the Contract. As a minimum, the Vendor shall provide and maintain the following coverage and limits:

- a) **Worker's Compensation** - The Vendor shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, as well as employer's liability coverage with minimum limits of \$100,000.00, covering all of Vendor's employees who are engaged in any work under the Contract. If any work is sublet, the

Vendor shall require the subcontractor to provide the same coverage for any of his employees engaged in any work under the Contract ; and

b) **Commercial General Liability** - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$2,000,000.00 Combined Single Limit (Defense cost shall be in excess of the limit of liability); and

c) **Automobile** - Automobile Liability Insurance, to include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with the Contract. The minimum combined single limit shall be \$500,000.00 bodily injury and property damage; \$500,000.00 uninsured/under insured motorist; and \$5,000.00 medical payment; and

d) Providing and maintaining adequate insurance coverage described herein is a material obligation of the Vendor and is of the essence of this Contract. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. The Vendor shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Contract. The limits of coverage under each insurance policy maintained by the Vendor shall not be interpreted as limiting the Vendor's liability and obligations under the Contract.

**24) Dispute Resolution:** The parties agree that it is in their mutual interest to resolve disputes informally. A claim by the Vendor shall be submitted in writing to the Agency Contract Administrator for decision. A claim by the State shall be submitted in writing to the Vendor's Contract Administrator for decision. The Parties shall negotiate in good faith and use all reasonable efforts to resolve such dispute(s). During the time the Parties are attempting to resolve any dispute, each shall proceed diligently to perform their respective duties and responsibilities under this Contract. If a dispute cannot be resolved between the Parties within thirty (30) days after delivery of notice, either Party may elect to exercise any other remedies available under this Contract, or at law. This term shall not constitute an agreement by either party to mediate or arbitrate any dispute.

**25) Default:** In the event any Deliverable furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract specifications, notice of the failure is provided by the State and if the failure is not cured within ten (10) days, or Vendor fails to meet the requirements of Paragraph 13) (Acceptance Criteria) herein, the State may cancel and procure the articles or services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 28) (Limitation of Vendor's Liability) and 29) (Vendor's Liability for Injury to Persons or Damage to Property) and the obligation to informally resolve disputes as provided in Paragraph 24) of these Terms and Conditions. Default may be cause for debarment as provided in 09 NCAC 06B.1206. The State reserves the right to require performance guaranties pursuant to 09 NCAC 06B.1207 from the Vendor without expense to the State. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.

a) If Vendor fails to deliver Deliverables within the time required by this Contract, the State may provide written notice of said failure to Vendor, and by such notice require payment of a penalty.

b) Should the State fail to perform any of its obligations upon which Vendor's performance is conditioned, Vendor shall not be in default for any delay, cost increase or other consequences due to the State's failure. Vendor will use reasonable efforts to mitigate delays, costs or expenses arising from assumptions in the Vendor's bid documents that prove erroneous or are otherwise invalid. Any deadline that is affected by any such failure in assumptions or performance by the State shall be extended by an amount of time reasonably necessary to compensate for the effect of such failure.

c) Vendor shall provide a plan to cure any default if requested by the State. The plan shall state the nature of the default, the time required for cure, any mitigating factors causing or tending to cause the default, and such other information as the Vendor may deem necessary or proper to provide.

**26) Waiver of Default:** Waiver by either party of any default or breach by the other Party shall not be deemed a waiver of any subsequent default or breach and shall not be construed to be a modification or novation of the terms of this Contract, unless so stated in writing and signed by authorized representatives of the Agency and the Vendor, and made as an amendment to this Contract pursuant to Paragraph 40) herein below.

**27) Termination:** Any notice or termination made under this Contract shall be transmitted via US Mail, Certified Return Receipt Requested. The period of notice for termination shall begin on the day the return receipt is signed and dated.

- a) The parties may mutually terminate this Contract by written agreement at any time.
- b) The State may terminate this Contract, in whole or in part, pursuant to Paragraph 25) (Default), or pursuant to the Special Terms and Conditions in the Solicitation Documents, if any, or for any of the following:
  - i) Termination for Cause: In the event any goods, software, or service furnished by the Vendor during performance of any Contract term fails to conform to any material requirement of the Contract, and the failure is not cured within the specified time after providing written notice thereof to Vendor, the State may cancel and procure the articles or services from other sources; holding Vendor liable for any excess costs occasioned thereby, subject only to the limitations provided in Paragraphs 28) and 29) herein. The rights and remedies of the State provided above shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract. Vendor shall not be relieved of liability to the State for damages sustained by the State arising from Vendor's breach of this Contract; and the State may, in its discretion, withhold any payment due as a setoff until such time as the damages are finally determined or as agreed by the parties. Voluntary or involuntary Bankruptcy or receivership by Vendor shall be cause for termination.
  - ii) Termination For Convenience Without Cause: The State may terminate service and indefinite quantity contracts, in whole or in part by giving thirty (30) days prior notice in writing to the Vendor. Vendor shall be entitled to sums due as compensation for Deliverables provided and services performed in conformance with the Contract. In the event the Contract is terminated for the convenience of the State the Agency will pay for all work performed and products delivered in conformance with the Contract up to the date of termination.

**28) Limitation of Vendor's Liability:**

- a) Where Deliverables are under the State's exclusive management and control, the Vendor shall not be liable for direct damages caused by the State's failure to fulfill any State responsibilities of assuring the proper use, management and supervision of the Deliverables and programs, audit controls, operating methods, office procedures, or for establishing all proper checkpoints necessary for the State's intended use of the Deliverables.
- b) The Vendor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to two times the value of the Contract.
- c) The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Vendor's negligence or willful or wanton conduct. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this Contract.

**29) Vendor's Liability for Injury to Persons or Damage to Property:**

- a) The Vendor shall be liable for damages arising out of personal injuries and/or damage to real or tangible personal property of the State, employees of the State, persons designated by the State for training, or person(s) other than agents or employees of the Vendor, designated by the State for any purpose, prior to, during, or subsequent to delivery, installation, acceptance, and use of the Deliverables either at the Vendor's site or at the State's place of business, provided that the injury or damage was caused by the fault or negligence of the Vendor.
- b) The Vendor agrees to indemnify, defend and hold the Agency and the State and its Officers, employees, agents and assigns harmless from any liability relating to personal injury or injury to real or personal property of any kind, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this contract, whether tangible or intangible, arising out of the ordinary negligence, willful or wanton negligence, or intentional acts of the Vendor, its officers, employees, agents, assigns or subcontractors, in the performance of this Contract.
- c) Vendor shall not be liable for damages arising out of or caused by an alteration or an attachment not made or installed by the Vendor, or for damage to alterations or attachments that may result from the normal operation and maintenance of the Vendor's goods.

**30) General Indemnity:** The Vendor shall hold and save the State, its officers, agents and employees, harmless from liability of any kind, including all claims and losses, with the exception of consequential damages, accruing or resulting to any other person, firm or corporation furnishing or supplying work, services, materials or supplies in connection with the performance of this Contract. The foregoing indemnification and defense by the Vendor shall be conditioned upon the following:

- a) The Agency shall give Vendor written notice within thirty (30) days after it has actual knowledge of any such claim(s) or action(s) filed; and



b) The Vendor shall have the sole control of the defense of any such claim(s) or action(s) filed and of all negotiations relating to settlement or compromise thereof, provided, however, that the Agency or State shall have the option to participate at their own expense in the defense of such claim(s) or action(s) filed.

**31) Changes:** This Contract and subsequent purchase order(s) is awarded subject to shipment of quantities, qualities, and prices indicated by the order or Contract, and all conditions and instructions of the Contract or proposal on which it is based. Any changes made to this Contract or purchase order proposed by the Vendor are hereby rejected unless accepted in writing by the Agency or State Award Authority. The State shall not be responsible for Deliverables or services delivered without a purchase order from the Agency or State Award Authority.

**32) Stop Work Order:** The State may issue a written Stop Work Order to Vendor for cause at any time requiring Vendor to suspend or stop all, or any part, of the performance due under this Contract for a period up to ninety (90) days after the Stop Work Order is delivered to the Vendor. The ninety (90) day period may be extended for any further period for which the parties may agree.

a) The Stop Work Order shall be specifically identified as such and shall indicate that it is issued under this term. Upon receipt of the Stop Work Order, the Vendor shall immediately comply with its terms and take all reasonable steps to minimize incurring costs allocable to the work covered by the Stop Work Order during the period of work suspension or stoppage. Within a period of ninety (90) days after a Stop Work Order is delivered to Vendor, or within any extension of that period to which the parties agree, the State shall either:

- i) Cancel the Stop Work Order, or
- ii) Terminate the work covered by the Stop Work Order as provided for in the termination for default or the termination for convenience clause of this Contract.

b) If a Stop Work Order issued under this clause is canceled or the period of the Stop Work Order or any extension thereof expires, the Vendor shall resume work. The State shall make an equitable adjustment in the delivery schedule, the Contract price, or both, and the Contract shall be modified, in writing, accordingly, if:

- i) The Stop Work Order results in an increase in the time required for, or in the Vendor's cost properly allocable to the performance of any part of this Contract, and
- ii) The Vendor asserts its right to an equitable adjustment within thirty (30) days after the end of the period of work stoppage; provided that if the State decides the facts justify the action, the State may receive and act upon a proposal submitted at any time before final payment under this Contract.

c) If a Stop Work Order is not canceled and the work covered by the Stop Work Order is terminated in accordance with the provision entitled Termination for Convenience of the State, the State shall allow reasonable direct costs resulting from the Stop Work Order in arriving at the termination settlement.

d) The State shall not be liable to the Vendor for loss of profits because of a Stop Work Order issued under this term.

**33) Price Adjustments for Term Contracts:** Reserved.

**34) Time is of the Essence.** Time is of the essence in the performance of this Contract.

**35) Date and Time Warranty:** The Vendor warrants that any Deliverable, whether hardware, firmware, middleware, custom or commercial software, or internal components, subroutines, and interface therein which performs any date and/or time data recognition function, calculation, or sequencing, will provide accurate date/time data and leap year calculations. This warranty shall survive termination or expiration of the Contract.

**36) Independent Contractors:** Vendor and its employees, officers and executives, and subcontractors, if any, shall be independent Vendors and not employees or agents of the State. This Contract shall not operate as a joint venture, partnership, trust, agency or any other business relationship.

**37) Transportation:** Transportation of Deliverables shall be FOB Destination; unless otherwise specified in the solicitation document or purchase order. Freight, handling, hazardous material charges, and distribution and installation charges shall be included in the total price of each item. Any additional charges shall not be honored for payment unless authorized in writing by the Purchasing State Agency. In cases where parties, other than the Vendor ship materials against this order, the shipper must be instructed to show the purchase order number on all packages and shipping manifests to ensure proper identification and payment of invoices. A complete packing list must accompany each shipment.

**38) Notices:** Any notices required under this Contract should be delivered to the Contract Administrator for each party. Unless otherwise specified in the Solicitation Documents, any notices shall be delivered in writing by U.S. Mail, Commercial Courier or by hand.

**39) Titles and Headings:** Titles and Headings in this Contract are used for convenience only and do not define, limit or proscribe the language of terms identified by such Titles and Headings.

**40) Amendment:** This Contract may not be amended orally or by performance. Any amendment must be made in written form and signed by duly authorized representatives of the State and Vendor in conformance with Paragraph 31) herein.

**41) Taxes:** The State of North Carolina is exempt from Federal excise taxes and no payment will be made for any personal property taxes levied on the Vendor or for any taxes levied on employee wages. Agencies of the State may have additional exemptions or exclusions for federal or state taxes. Evidence of such additional exemptions or exclusions may be provided to Vendor by Agencies, as applicable, during the term of this Contract. Applicable State or local sales taxes shall be invoiced as a separate item.

**42) Governing Laws, Jurisdiction, and Venue:**

a) This Contract is made under and shall be governed and construed in accordance with the laws of the State of North Carolina. The place of this Contract or purchase order, its situs and forum, shall be Wake County, North Carolina, where all matters, whether sounding in contract or in tort, relating to its validity, construction, interpretation and enforcement shall be determined. Vendor agrees and submits, solely for matters relating to this Contract, to the jurisdiction of the courts of the State of North Carolina, and stipulates that Wake County shall be the proper venue for all matters.

**43) Force Majeure:** Neither party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations as a result of events beyond its reasonable control, including without limitation, fire, power failures, any act of war, hostile foreign action, nuclear explosion, riot, strikes or failures or refusals to perform under subcontracts, civil insurrection, earthquake, hurricane, tornado, or other catastrophic natural event or act of God.

**44) Compliance with Laws:** The Vendor shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business, including those of federal, state, and local agencies having jurisdiction and/or authority. In providing Services and Deliverables, and without limiting or modifying in any respect the Vendor's obligations, Vendor shall comply, and shall cause each of its employees and subcontractors to comply at all times, with State policies that are of general application to State contractors or that Vendor has otherwise agreed to, comply with, including, without limitation, the Statewide Information Security Manual and ITS Security Standards and Policies.

**45) Severability:** In the event that a court of competent jurisdiction holds that a provision or requirement of this Contract violates any applicable law, each such provision or requirement shall be enforced only to the extent it is not in violation of law or is not otherwise unenforceable and all other provisions and requirements of this Contract shall remain in full force and effect. All promises, requirement, terms, conditions, provisions, representations, guarantees and warranties contained herein shall survive the expiration or termination date unless specifically provided otherwise herein, or unless superseded by applicable federal or State statute, including statutes of repose or limitation.

**46) Federal Intellectual Property Bankruptcy Protection Act:** The Parties agree that the Agency shall be entitled to all rights and benefits of the Federal Intellectual Property Bankruptcy Protection Act, Public Law 100-506, codified at 11 U.S.C. 365(n), and any amendments thereto.

**47) Electronic Procurement (Applies to all contracts that include E-Procurement and are identified as such in the body of the solicitation document):** Purchasing shall be conducted through the Statewide E-Procurement Service. The State's third party agent shall serve as the Supplier Manager for this E-Procurement Service. The Vendor shall register for the Statewide E-Procurement Service within two (2) business days of notification of award in order to receive an electronic purchase order resulting from award of this contract.

a) Reserved

b) Reserved

c) The Supplier Manager will capture the order from the State approved user, including the shipping and payment information, and submit the order in accordance with the E-Procurement Service. Subsequently, the Supplier Manager will send those orders to the appropriate Vendor on State Contract. The State or State approved user, not the Supplier Manager, shall be responsible for the solicitation, bids received, evaluation of bids received, award of contract, and the payment for goods delivered.

d) Vendor agrees at all times to maintain the confidentiality of its user name and password for the Statewide E-Procurement Services. If a Vendor is a corporation, partnership or other legal entity, then the Vendor may authorize

its employees to use its password. Vendor shall be responsible for all activity and all charges for such employees. Vendor agrees not to permit a third party to use the Statewide E-Procurement Services through its account. If there is a breach of security through the Vendor's account, Vendor shall immediately change its password and notify the Supplier Manager of the security breach by e-mail. Vendor shall cooperate with the state and the Supplier Manager to mitigate and correct any security breach.

**48) Electronic Procurement (Applies only to Statewide Term Contracts):** Reserved